

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Omolade	Team: Team # 2	CCRB Case #: 201400700	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/16/2014 10:00 AM	Location of Incident: Decker Avenue and Beekman Street	Precinct: 121	18 Mo. SOL 7/16/2015	EO SOL 7/16/2015	
Date/Time CV Reported Thu, 01/23/2014 1:07 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/23/2014 1:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Rutigliano	15287	951189	121 PCT
2. LT Thomas Smith	00000	939495	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Cirelli	29062	944032	121 PCT
2. POF Rachel Mai	20690	938912	A P DIV

Officer(s)	Allegation	Investigator Recommendation
A.LT Thomas Smith	Discourtesy: Lt. Thomas Smith spoke discourteously to § 87(2)(b)	
B.LT Thomas Smith	Abuse: Lt. Thomas Smith frisked § 87(2)(b)	
C.LT Thomas Smith	Abuse: Lt. Thomas Smith searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Nicholas Rutigliano	Abuse: PO Nicholas Rutigliano searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) called the CCRB via telephone to file this complaint (encl. 4A-C). On January 16, 2014, at approximately 10 a.m., the vehicle in which § 87(2)(b) was an occupant was stopped and § 87(2)(b) was subsequently arrested for § 87(2)(b). The following allegations ensued:

- **Allegation A- Discourtesy: Lt. Thomas Smith spoke discourteously to § 87(2)(b)**
§ 87(2)(g)
- **Allegation B- Abuse of Authority: Lt. Thomas Smith frisked § 87(2)(b)**
- **Allegation C- Abuse of Authority: Lt. Thomas Smith searched the vehicle in which § 87(2)(b) was an occupant.**
- **Allegation D- Abuse of Authority: PO Nicholas Rutigliano searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

- § 87(4-b) § 87(2)(g)

This case was not eligible for mediation.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female, 5'7" tall, 150 pounds, with black hair and brown eyes.
- § 87(2)(b)

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on February 10, 2014 (encl. 6C-E). On January 16, 2014, at approximately 10 a.m., § 87(2)(b) drove her 2004 Burgundy Toyota Camry on Morningstar Road on Staten Island and made a right turn onto Port Richmond Avenue when she saw a police vehicle at the red light. § 87(2)(b) stopped at the red light alongside the vehicle of PO Nicholas Rutigliano and PO John Cirelli, identified via investigation. When the light turned green, § 87(2)(b) made a left turn onto Decker Avenue. PO Rutigliano and PO Cirelli made a turn as well, stopping § 87(2)(b) with their lights. § 87(2)(b) pulled over to the right side of the street and rolled all four windows down.

PO Cirelli and PO Rutigliano approached § 87(2)(b) on the driver's side of her vehicle. PO Rutigliano stood to the rear of the vehicle while PO Cirelli, described as a white man in

uniform, 6' tall, over 200 pounds with a short haircut and in his thirties, asked for § 87(2)(b)'s license, registration and insurance. § 87(2)(b) told the officers that they should bear with her in looking for the documents as it was her sister's vehicle. PO Cirelli asked § 87(2)(b) to lower her music and wind up her windows. § 87(2)(b) lowered her music and asked PO Cirelli the reason she should wind the windows up. § 87(2)(b) wound up her windows anyway and PO Rutigliano, a white man in uniform, 5'7" tall, skinny build and in his thirties with black hair and white patches of hair tested the tinted windows which were at 31%.

PO Cirelli told § 87(2)(b) that her windows were too dark as he peered into her vehicle and continuously asked her about where her sister got her car from. § 87(2)(b) asked for a supervisor and PO Cirelli told § 87(2)(b) to hold onto her license and wait for a supervisor. § 87(2)(b) did not refuse to provide her license. Both officers proceeded to the rear of § 87(2)(b)'s vehicle to wait for the supervisor. § 87(2)(b) did not yell or use any profanity towards the officers. § 87(2)(b) called her fiancé and told him what was going on and then ended the call. § 87(2)(b) did not interact with PO Rutigliano. Lt. Thomas Smith, described as a white man, 6" tall, in his early forties to fifties, with light brown short hair and a little flip in the front, arrived on the scene, approached § 87(2)(b)'s vehicle and told her "Give me your fucking license." § 87(2)(b) also told Lt. Smith to give her time to look for it.

Lt. Smith told § 87(2)(b) to turn off the "fucking" car and reached into her vehicle through the window to turn off the car, which he could not do. The upper part of Lt. Smith's body was inside § 87(2)(b)'s vehicle. With her hands above her head, § 87(2)(b) asked Lt. Smith what he wanted her to do. Lt. Smith frisked § 87(2)(b)'s chest area to her upper leg and thigh area. § 87(2)(b) believed that Lt. Smith was looking for something. Lt. Smith attempted pulling § 87(2)(b) out of her vehicle but did not succeed as the door was locked. Lt. Smith then said "As a matter of fact, get the fuck out of the car." Simultaneously, Lt. Smith reached into § 87(2)(b)'s vehicle, opened the door and pulled her out of the vehicle by grabbing the front part of her sweater. There were civilians in the area. However, § 87(2)(b) did not know any of them. Another unidentified officer helped Lt. Smith pull § 87(2)(b) out of the vehicle by grabbing and pulling her waist area out of her seat. § 87(2)(b) did not resist, make any movements with her body or refuse to exit the vehicle. § 87(2)(b) could not describe the second officer who pulled her out of the vehicle. § 87(2)(b) believed that she blacked out at this time and only remembered being pulled back up from the ground in handcuffs.

§ 87(2)(b) sustained a scratch on her stomach but did not recall when during the incident she sustained it. However, § 87(2)(b) believed that Lt. Smith scratched her as he was next to her when she was picked up from the ground. Later in her interview, § 87(2)(b) remembered being pulled out of the vehicle and onto the ground, where she felt about six hands on her back. § 87(2)(b) also felt a knee in her back and handcuffs then placed on her. When § 87(2)(b) was pulled up from the ground, she saw PO Rachel Mai, identified via investigation and described as an Asian woman, 5'5" tall, thin build, in her thirties, with black hair, and two additional officers. Lt. Smith continued screaming at § 87(2)(b) and in turn, she screamed while asking the officers "All of this for fucking tints." § 87(2)(b) did not hear what Lt. Smith said.

PO Rutigliano and Lt. Smith searched § 87(2)(b)'s entire vehicle, including the trunk. The vehicle was taken to the 121st Precinct and was later picked up by § 87(2)(b)'s father, § 87(2)(b). § 87(2)(b) was transported to the 121st Precinct stationhouse. § 87(2)(b) was taken to Central Booking, where she stayed overnight. § 87(2)(b) was told that her license was suspended, which she denied. The following day, at 12 p.m., § 87(2)(b) was

taken to see the judge, who told her to stay out of trouble for six months. § 87(2)(b) went to the § 87(2)(b) the following day for a pre-existing condition (crohn's disease) but was not treated for her scratches.

NYPD Statements:

Witness Officer: PO JOHN CIRELLI

- *PO John Cirelli is a § 87(2)(b)-old white man, 5'11" tall, 240 pounds, with black hair and blue eyes.*
- *On January 16, 2014, he was assigned to a zone auto with PO Rutigliano from 7:05 a.m., until 3:40 p.m., in uniform and in a marked vehicle.*

Memo Book

PO Cirelli had extensive memo book entries regarding this incident (encl. 7A-D).

CCRB Statement

PO John Cirelli was interviewed at the CCRB on August 14, 2014 (encl. 7F-G). On January 16, 2014, at approximately 10:08 a.m., PO Cirelli, the driver, and PO Rutigliano were driving southbound on Port Richmond Road, when they observed § 87(2)(b)'s vehicle with tints on her window. PO Cirelli and PO Rutigliano put on their lights and sirens to stop § 87(2)(b)'s vehicle and she complied and pulled over. PO Cirelli and PO Rutigliano approached § 87(2)(b)'s side of the vehicle but PO Cirelli could not tell whether she turned off her vehicle.

PO Cirelli asked § 87(2)(b) for her license and registration and § 87(2)(b) asked why she was stopped. PO Cirelli responded stating that her windows were too dark and asked for her paperwork again. § 87(2)(b) asked for their supervisor and refused to provide her paperwork by turning up the music in her vehicle and calling an unknown person over the phone. PO Rutigliano and PO Cirelli called their supervisor, Lt. Smith, who arrived about five minutes later. When Lt. Smith arrived, PO Cirelli and PO Rutigliano were standing beside their vehicle, which was about 15 ft. away from § 87(2)(b)'s vehicle.

Although PO Cirelli heard Lt. Smith ask for § 87(2)(b)'s paperwork when he approached, PO Cirelli did not hear any additional exchanges between them as he was a distance away. PO Cirelli did not hear Lt. Smith say, "Get the fuck out of the car," or use any profanities against § 87(2)(b). PO Cirelli did not see Lt. Smith frisk § 87(2)(b) or reach into her vehicle. The only time Lt. Smith reached into § 87(2)(b)'s vehicle, was to remove her from the vehicle. PO Rutigliano and PO Cirelli approached to assist Lt. Smith.

§ 87(2)(b) was under arrest at this time as per Lt. Smith. Upon his approach, PO Cirelli observed Lt. Smith holding onto § 87(2)(b)'s body to lead her out of the car. PO Cirelli did not recall where Lt. Smith grabbed § 87(2)(b). § 87(2)(b) resisted Lt. Smith's efforts to pull her out of the vehicle by flailing her arms and kicking her feet. § 87(2)(b) flailed her arms by moving them around, pulling away and not allowing Lt. Smith to grab her. PO Cirelli may have held § 87(2)(b)'s legs down but did not recall doing this. Once § 87(2)(b) was out of the vehicle, her body went limp to the ground. § 87(2)(b) never blacked out but went limp by locking up her arms and legs and letting her body drop to the ground. While § 87(2)(b) was on the ground, she continued to resist. PO Cirelli did not recall who handcuffed § 87(2)(b) or who picked her up. PO Cirelli did not see any injuries on § 87(2)(b). § 87(2)(b)'s vehicle was not searched at the scene of the incident or at the precinct. PO Cirelli did not drive § 87(2)(b)'s vehicle to the precinct and did not recall who did. The vehicle was not vouchered at the precinct.

Subject Officer: PO NICOLAS RUTIGLIANO

- *PO Rutigliano is a white man, 5'9" tall, 185 pounds, with black hair and brown eyes.*
- *On January 16, 2014, he was in uniform and assigned to patrol from 7:05 a.m., until 3:40 p.m., with PO Cirelli and drove marked vehicle #3925.*

Memo Book

On January 16, 2014, at 10:08 a.m., car stop on Decker and Beekman Avenues for tinted windows. Tint meter read 31% and driver refused to hand license over and asked for supervisor. Called supervisor and Lt. Smith arrived and § 87(2)(b) still would not hand over license numerous times. Defendant repeatedly blasted music, ignored officers and refused to get out of the car, resisted arrest and was being disrespectful and combative. At 10:20 a.m., one under for § 87(2)(b). At 11:04 a.m., returning property and car plate # § 87(2)(b) 2006 Camry Toyota, Red to owner with perpetrator's property, cellphone and bag in vehicle to § 87(2)(b) (encl. 8A-C).

Arrest and Complaint Report

At the time and place of occurrence, PO Rutigliano pulled over § 87(2)(b) for excessive tints. The meter on driver's side window read 31 percent and § 87(2)(b) was asked for her driver's license at which, she refused and said she wanted a boss at the scene. § 87(2)(b) put music on and spoke on the phone while she was being given commands. Lt. Smith arrived on the scene and asked numerous times for her driver's license and she refused. § 87(2)(b) was asked to step out of her vehicle and § 87(2)(b) refused and resisted arrest (encl. 8D-H). The arrest report noted that no force was used.

Property Voucher § 87(2)(b)

§ 87(2)(b)'s engagement ring alone was vouchered. The vehicle § 87(2)(b) drove was not listed on the property voucher (encl. 11).

Criminal Court Complaint

PO Rutigliano reported that on January 16, 2014, at 10 a.m., § 87(2)(b) was charged with § 87(2)(a) 160.50, § 87(2)(b) (encl. 8I).

CCRB Statement

PO Rutigliano was interviewed at the CCRB on May 21, 2014 (encl. 8K-L) § 87(2)(g)

Lt. Smith responded and told § 87(2)(b) to turn off her car and she refused by saying no. § 87(2)(b) was asked multiple times by Lt. Smith to get out of her vehicle and she refused. Lt. Smith took § 87(2)(b) by her arm and pulled her out of the vehicle. PO Rutigliano did not know if Lt. Smith frisked her during this time. PO Rutigliano did not recall whether Lt. Smith told § 87(2)(b) "Give me your fucking license or turn off the fucking car." Lt. Smith did not tell § 87(2)(b) to get the "fuck" out of the car. PO Rutigliano did not hear any profanity used against § 87(2)(b). PO Rutigliano did not recall how § 87(2)(b) sustained the scratches to her stomach area. As § 87(2)(b) was pulled out, her body went limp on the ground to avoid giving her arms to them. At no point was § 87(2)(b) standing. PO Rutigliano and PO Cirelli assisted in handcuffing § 87(2)(b) while she was on the ground.

On the ground, § 87(2)(b) was resisting by pulling her arms away from officers. PO Rutigliano then grabbed § 87(2)(b)'s arm while Lt. Smith grabbed her other arm. PO Rutigliano did not see where § 87(2)(b) was grabbed by PO Cirelli. § 87(2)(b) was finally handcuffed and placed in a patrol vehicle by PO Rutigliano and PO Cirelli. Other officers on the scene arrived after § 87(2)(b) was handcuffed. PO Rutigliano did not recall who those officers were. § 87(2)(b) was transported back to the 121st Precinct. § 87(2)(b)'s vehicle was not searched at the scene and he did not recall who drove it to the precinct.

PO Rutigliano and PO Cirelli searched § 87(2)(b)'s vehicle at the precinct. They searched where § 87(2)(b) was seated, and the backseats of the vehicle. PO Rutigliano and PO Cirelli did not search the trunk of the vehicle. However, PO Rutigliano went into § 87(2)(b)'s glove box to get her registration and insurance. The vehicle was not vouchered as it was returned to § 87(2)(b).

Subject Officer: LT. THOMAS SMITH

- *Lt Thomas Smith is § 87(2)(b)-old white man, 5'9" tall, 165 pounds with brown hair and brown eyes.*
- *On January 17, 2014, he was assigned as the platoon commander from 6:50 a.m., until 3:35 p.m. in uniform. Lt. Smith drove a marked vehicle with PO Mai.*

Memo Book

Lt. Smith did not have any memo book entries regarding this incident (encl. 9A-B).

CCRB Statement

Lt. Smith was interviewed at the CCRB on July 17, 2014 (encl. 9D-E). § 87(2)(g)

PO Rutigliano and PO Cirelli were the only officers present on the scene when Lt. Smith and PO Mai arrived. Lt. Smith did not tell § 87(2)(b) "Give me your fucking license." § 87(2)(b) asked why she was stopped and became combative and verbally abusive, using vulgarities. Lt. Smith told § 87(2)(b) why she was stopped and requested her documents a second time and she refused, stating that she was not giving them her documents. PO Rutigliano and PO Cirelli were standing behind Lt. Smith at the time.

Lt. Smith gave § 87(2)(b) a final warning and she was still combative and refused again. Lt. Smith then asked § 87(2)(b) to step out of her vehicle. Lt. Smith did not recall how many times § 87(2)(b) refused to exit her vehicle. Lt. Smith did not tell § 87(2)(b) "Get the fuck out of the car." Lt. Smith stated that he may have used profanity against § 87(2)(b) but did not recall the context or specific statements used. § 87(2)(b)'s demeanor did not change and she continued being combative and verbally abusive towards them. § 87(2)(b) told Lt. Smith verbally that she was not getting out of the vehicle. Lt. Smith did not recall reaching into § 87(2)(b)'s vehicle to turn her vehicle off, nor did he frisk § 87(2)(b) while she was seated in her vehicle. At this time, § 87(2)(b) was under arrest. As § 87(2)(b) was not compliant with any of his orders, and Lt. Smith did not know what § 87(2)(b) had in her vehicle, he feared for his safety and removed § 87(2)(b) from her vehicle by grabbing her arms and pulling her out.

Lt. Smith did not recall whether PO Rutigliano or PO Cirelli assisted him in pulling § 87(2)(b) out of her vehicle. While she was being pulled out of her vehicle, § 87(2)(b) resisted by pulling away and attempting to break free from his hold. Lt. Smith did not lose his grip of § 87(2)(b) and continued pulling her from the vehicle. Lt. Smith did not grab anywhere else on § 87(2)(b)'s body or use any force beyond pulling her arms. Once she was out of her vehicle, § 87(2)(b) and Lt. Smith fell to the ground. Their falling to the ground

could have been a result of bad footing or § 87(2)(b)'s fighting him. Lt. Smith did not recall whether PO Rutigliano or PO Cirelli assisted him when he was on the ground with § 87(2)(b). § 87(2)(b) was then handcuffed on the ground by Lt. Smith. Lt. Smith did not notice any injuries on § 87(2)(b). It took less than a minute to pull § 87(2)(b) out of her vehicle and handcuff her.

Lt. Smith did not search § 87(2)(b)'s vehicle. Lt. Smith did not recall whether § 87(2)(b)'s vehicle was searched at the scene. § 87(2)(b)'s vehicle was brought back to the 121st Precinct and would have been searched there as per departmental guidelines. Lt. Smith did not witness this and did not know who conducted the search. It is usually the responsibility of the arresting officer or his partner who conducts the vehicle search.

Additional Officers Interviewed

PO Mai was interviewed on August 13, 2014, and did not recall the incident (encl.9F-J).

Medical Records

Although § 87(2)(b) did go to § 87(2)(b), she was treated for a preexisting condition and did not have her alleged injuries stemming from this incident examined.

§ 87(2)(g)

NYPD Documents

Command Log

The 121st Precinct command log noted that § 87(2)(b) was logged in at 10:28 a.m., (encl. 10).

Roll Call

The 121st roll call noted that PO Rutigliano and PO Cirelli were working together and assigned to vehicle #3925 (encl. 12A-I).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 18, 2014, more than four months after the 90-day filing deadline with regard to this incident (encl. 18G).

Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3).

Subject Officer's CCRB History

- Lt. Smith has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 1).
- PO Rutigliano has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 2).

Conclusion

Identification of Subject Officers

Lt. Smith and PO Rutigliano acknowledged interacting with § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A- Discourtesy: Lt. Thomas Smith spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Lt. Smith told her “Give me your fucking license” and when § 87(2)(b) told Lt. Smith to give her time to look for it, he told her “Turn off the fucking car” and reached into her vehicle to turn it off. § 87(2)(b) also alleged that Lt. Smith told her “As a matter of fact, get the fuck out of the car.” Lt. Smith denied the specific allegations and stated that he may have used profanity against § 87(2)(b) but did not recall the context or the specific statements used. Lt. Smith also stated that he asked § 87(2)(b) three times for her documents and for her to exit her vehicle and she refused each time. PO Rutigliano did not recall whether Lt. Smith spoke discourteously to § 87(2)(b) and PO Cirelli stated that he did not hear this.

NYPD v. Court (DCT # 79627/04) determined that it was permissible for officers to use profanity in order to gain compliance in stressful street encounters (encl. A1-10).

§ 87(2)(g)

Allegation B- Abuse of Authority: Lt. Thomas Smith frisked § 87(2)(b)

§ 87(2)(b) alleged that Lt. Smith frisked her while she was in her vehicle. Although Lt. Smith feared for his safety because § 87(2)(b) did not comply with his orders, he did not recall reaching into § 87(2)(b)'s vehicle to turn it off. Neither did Lt. Smith frisk § 87(2)(b) while she was seated in her vehicle. As § 87(2)(b) was under arrest for not complying with Lt. Smith's orders, the only time he reached into her vehicle, was to remove and arrest her. PO Rutigliano did not recall whether § 87(2)(b) was frisked and PO Cirelli did not see Lt. Smith frisk her as he was 15 feet away.

§ 87(2)(g)

Allegation C- Abuse of Authority: Lt. Thomas Smith searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D- Abuse of Authority: PO Nicholas Rutigliano searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Rutigliano searched § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) alleged that Lt.

Smith and PO Rutigliano searched everywhere in her vehicle, including the trunk. Lt. Smith, PO Rutigliano and PO Cirelli denied searching § 87(2)(b)'s vehicle at the scene. Both Lt. Smith and PO Rutigliano did not recall whether § 87(2)(b)'s vehicle was ever searched at the scene by any other officer. Lt. Smith stated that § 87(2)(b)'s vehicle would have been searched at the precinct. However, he was not party to the search and did not recall who conducted the search. PO Rutigliano stated both himself and PO Cirelli searched around § 87(2)(b)'s seat, the backseat and the glove box to get her registration and insurance. However, the trunk of § 87(2)(b)'s vehicle was never searched. PO Cirelli did not recall whether § 87(2)(b)'s vehicle was searched at the precinct.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date